HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

Cr.A.No. 719 of 2000
Reserved on: 26.10.2007.
Decided on: 2.11.2007.

State of Himachal Pradesh .....Appellant.

Versus

Vishal Sharma and others .....Respondents.

Coram:

The Hon'ble Mr.Justice V.K. Ahuja, Judge.

Whether approved for reporting? No.

For the appellant: Mr.Ashutosh Burathoki, Additional Advocate General.

For the respondents: Mr.Bimal Gupta, Advocate.

V.K. Ahuja, J:

This is an appeal filed by the appellant/State of H.P. against the judgment of the court of learned Additional Chief Judicial Magistrate, Nahan, dated 15.12.1999, vide which the respondents were acquitted of the charge framed against them under Sections 325, 324 and 323 read with Section 34 IPC.

Briefly stated the facts of the case are that on 1.1.1996, at about 12.45 p.m., a report was lodged with the police by one Manoj Kumar that he is running a *chat* shop at Mall Road, Nahan and on the upper storey his cousin brother Kamal Kumar looks after a Café named as Mall View Café. On the lower storey,

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[1]. Whether reporters of Local papers may be allowed to see the judgment? Yes.

he alongwith his elder brother Parveen Kumar look after the *chat* shop. At about 12.25 p.m., he was present alongwith his cousin Kamal Kumar on the upper storey of the Café and Sat Pal, Worker, and Heera Singh, Waiter, were also present there. All the three respondents came there armed with *Khukhri* and attacked Kamal Kumar, who tried to rescue himself and suffered injuries on his left hand. Kamal Kumar was thrown on the ground and the accused started giving him beatings. He raised an alarm on which his brother Parveen Kumar came and tried to save Kamal Kumar who was also attacked by Vishal Sharma, respondent, with *Khukhri*, who suffered injury on his right hand. All the three respondents (hereinafter also referred as accused persons) ran away from the place of occurrence. Both the injured were sent to the hospital and the complainant came to the Police *Chowki* to lodge the report. On this report, a case was registered and after investigation, the challan was filed by the police under Sections 307, 326, 325, 324, 323, 452 read with Section 34 IPC.

On consideration, the learned Additional Sessions framed the charge as against the respondents under Sections 325, 324, 323 read with Section 34 IPC and the case was sent to the court of learned Addl.CJM, Nahan, who tried the respondents under these Sections. On conclusion of the trial, all the three respondents were acquitted of the charges framed against them.

I have heard the learned Additional Advocate General for the appellant/State and the learned counsel for the respondents.

The submissions made by the learned Additional Advocate General were that the prosecution had established its case from the statement of the injured witness coupled with the statement of the complainant, but the learned Trial Court had referred to minor contradictions or discrepancies in the prosecution

case and had wrongly acquitted the respondents, which findings are not based upon correct appreciation of evidence and law and as such are liable to be reversed.

On the other hand, the learned counsel for the respondents had supported the judgment passed by the learned Trial Court for the reasons recorded therein.

On a perusal of the record of the case, it is clear that the police set into motion on the complaint of PW-1 Manoj Kumar in which he narrated the facts as to how the respondents firstly attacked his cousin brother Kamal Kumar and thereafter they caused injury on the person of Parveen Kumar, who tried to rescue Kamal Kumar. The report was lodged at 12.45 p.m. and according to the allegation made, the occurrence had taken place at 12.25 p.m. and as such the FIR was lodged with promptitude. Once the FIR was lodged with promptitude, there was no occasion for the complainant to falsely introduce the names of the witnesses or twist the facts and, therefore, the evidence has to be appreciated in the light of fact that there was no delay in lodging the FIR, which was lodged within 20 minutes of the occurrence.

Coming to the evidence, the prosecution had examined PW-1 Manoj Kumar (complainant), PW-2 Kamal Kumar, who had been given blows by the accused persons, PW-5 Heera Singh, Waiter, PW-6 Sat Pal, Worker working in the Café, as eye witnesses. Their statements need to be appreciated with care and caution. However, other injured Parveen Kumar, who was the real brother of the complainant Manoj Kumar PW-1, was not examined by the persecution inspite of opportunities having been given since there were reports that the whereabouts of the person are not known and no fresh address was filed and

the evidence of the prosecution was closed by the learned Trial Court by order of court on 5.11.1999. In view of the fact that he was one of the injured, his examination was necessary and since he was the brother of the complainant working at the same place, it was not difficult for the prosecution to have produced this witness and I do not find any reason as to why the prosecution has not examined this witness and the fact of his non-examination appears not to have been discussed by the learned Trial Court in its judgment.

In so far as the statements of PW-1 Manoj Kumar and PW-2 Kamal Kumar are concerned, they have materially stated in the same manner as the facts were alleged in the report lodged with the police and there are no material contradictions in regard to the manner in which the occurrence took place. However, the learned Trial Court in acquitting the respondents has mainly relied upon the question that two of the accused persons, namely, Bharat Sharma and Vishal Sharma had also suffered injuries at that time and their medical examination certificates were duly proved in evidence also, but the prosecution has failed to explain as to how these two accused persons also suffered injuries at the same time. The another ground taken by the learned Trial Court for acquitting the accused persons was that both the witnesses, namely, PW-5 Heera Singh and PW-6 Sat Pal working in the Café turned hostile and did not support the prosecution, though they were very much present at the place of occurrence at that time. The reason which has been given is that PW-5 Heera Singh was presently working in the restaurant owned by one of the accused, though this was not taken as ground by the learned Trial Court for his turning hostile. This was a valid ground for his changing statement but the fact remains that he and PW-6 Sat Pal both have not supported the prosecution story in

regard to the occurrence and they have admitted the defence version that one of the accused had complained that there was fly in the tea served to him, which should be served in a proper manner, on which he and his other co-accused were given beatings by the complainant party at that time and they suffered injuries. The prosecution had proved both these MLCs of respondents, namely, of accused Vishal Sharma from the statement of PW-14 Dr.A.K. Gupta and that of Bharat Sharma from the statement of PW-12 S.C. Goel, which shows that they had also suffered injuries, which, as per the opinion of the Medical Officer, are possible in scuffle. There is nothing on record as to how the bottles had been broken at that time. It has come on the record that the broken bottles were taken in possession, which suggests that scuffle had taken place, which is the main reason given by the learned Trial Court in disbelieving the prosecution story. Therefore, the conclusion drawn by the learned Trial Court on the basis of the infirmities in the prosecution story and the fact that the origin of the occurrence has not been clearly brought on record, those findings cannot be said to be perverse calling for an interference at this stage by this Court. However, the learned Trial Court had failed to refer to the question that one of the injured Parveen Kumar was not examined and as to its effect and it had also not properly cited the case law or discussed the citation referred to by it, which was necessary. However, the net result remains the same that the findings of the learned Trial Court acquitting the respondents of the charges framed against them call for no interference by this Court since even if two views are possible from the evidence and one view taken by the learned Trial Court cannot be said to be perverse and, therefore, it calls for no interference by this Court. Thus, there is no merit in the appeal filed by the appellant/State of H.P., which is liable

to be dismissed and the same is dismissed accordingly. Bail bonds of the respondents shall stand discharged.

(V.K. Ahuja),
Judge.

November 2, 2007
(TILAK)